

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

ANTHONY WATTS, an individual,

Plaintiff,

Case No. 3:23-cv-00328-LRH-CSD

ORDER

V.

10 KOS MEDIA LLC, a foreign corporation;
11 JOHN DOES 1-5, individuals;
12 CORPORATION DOES 1-5, domestic or
foreign corporations,

Defendants.

15 Before the Court is Plaintiff Anthony Watts’ (“Watts”) Motion to Remand. ECF No. 9.
16 KOS Media LLC (“KOS”) filed a response in opposition to the motion (ECF No. 18) and Watts
17 replied (ECF No. 21). For the reasons articulated herein, the Court grants Watts’s motion to
18 remand. Also pending before the Court are two motions to dismiss filed by KOS. ECF Nos. 6, 19.
19 Because of the Court’s ruling on remand, the Court denies both motions to dismiss as moot.

20 | I. BACKGROUND

21 This matter stems from internet posts on a KOS website that allegedly revealed Watts'
22 personal identifying information. ECF No. 1 at 10–14. Watts is an individual residing in Washoe
23 County, Nevada, and the original Complaint describes him as a well-known pundit on climate
24 change. *Id.* at 10, 12. KOS is a Delaware limited liability company that conducts its media business
25 in Washoe County, Nevada. *Id.* at 11.

26 On May 24, 2023, Watts filed his original Complaint in the Second Judicial District Court
27 for the State of Nevada in and for Washoe County. *Id.* at 10. The original Complaint alleges that
28 KOS owns a website called “The Daily KOS” where users may anonymously post. *Id.* at 11. Watts

1 claims that on April 24, 2023, on the “Climate Denier Roundup” webpage of The Daily KOS, an
 2 anonymous post was published entitled “Heartland Fundraising for Tony Watts’ \$2,000
 3 Thermometers to Compete with Global Temp Network.” *Id.* The anonymous post allegedly
 4 included the geographic location and photographs of Watts’ Nevada-based home. *Id.* at 11, 12.
 5 Watts alleges that, by allowing and hosting the post, KOS violated Nevada Revised Statute
 6 § 41.1347. *Id.* Watts claims that he is entitled to relief available under the statute for the disclosure
 7 and republication of his personal identifying information without his consent. *Id.*

8 On July 5, 2023, KOS removed the matter pursuant to 28 U.S.C. §§ 1332, 1441, and 1446.
 9 (ECF No. 1 at 1) and, shortly after, filed a motion to dismiss Watts’ original Complaint (ECF
 10 No. 6). On July 26, 2023, Watts filed a motion to remand, the motion at issue in this Order. ECF
 11 No. 9. On August 2, 2023, Watts filed a First Amended Complaint (ECF No. 14), and on August
 12 16, 2023, KOS filed a Motion to Dismiss Watts’ First Amended Complaint (ECF No. 19). Watts’
 13 motion to remand is addressed below.

14 **II. LEGAL STANDARD**

15 Under 28 U.S.C. § 1441, “any civil action brought in a State court of which the district
 16 courts of the United States have original jurisdiction, may be removed by the defendant or the
 17 defendants, to the district court of the United States for the district and division embracing the
 18 place where such action is pending.” 28 U.S.C. § 1441(a). A district court has original jurisdiction
 19 over civil actions where the suit is between citizens of different states and the amount in
 20 controversy, exclusive of interests and costs, exceeds \$75,000.00. 28 U.S.C. § 1332(a).

21 “[T]he removing defendant bears the burden of establishing, by a preponderance of the
 22 evidence, that the amount in controversy exceeds \$[75],000.00.” *Sanchez v. Monumental Life Ins.*
 23 *Co.*, 102 F.3d 398, 404 (9th Cir. 1996). In determining whether the defendant has established that
 24 diversity jurisdiction exists, the district court must first consider whether it is “facially apparent”
 25 from the complaint that the jurisdictional amount in controversy requirement is met. *Singer v. State*
 26 *Farm Mut. Auto. Ins. Co.*, 116 F.3d 373, 377 (9th Cir. 1997). Generally, courts apply a mechanical
 27 test to determine whether the amount in controversy requirement has been met: “[t]he district court
 28 simply reads the ad damnum clause of the complaint to determine whether the matter in

1 controversy exceeds" \$75,000.00. *Id.* at 375. If it is apparent to the court that the claim was made
 2 in good faith, then the value of the claim controls for purposes of removal, unless it appears "to a
 3 legal certainty that the plaintiff cannot recover the amount claimed." *Id.*

4 Removal of a case to district court may be challenged by motion and a federal court must
 5 remand a matter if there is a lack of jurisdiction. *See generally*, 28 U.S.C. § 1441. Removal statutes
 6 are construed restrictively and in favor of remanding a case to state court. *See Shamrock Oil &*
 7 *Gas Corp. v. Sheets*, 313 U.S. 100, 108-109 (1941); *see also*, *Gaus v. Miles, Inc.*, 980 F.2d 564,
 8 566 (9th Cir. 1992).

9 **III. DISCUSSION**

10 As a preliminary matter, the Court finds that Watts' original Complaint (ECF No. 1 at 10–
 11 14) controls for purposes of the pending motion to remand because it is the Complaint on which
 12 KOS based removal. *See St. Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 291 (1938)
 13 ("the status of the case as disclosed by the plaintiff's complaint is controlling in the case of a
 14 removal"); *see also Chavez v. JPMorgan Chase & Co.*, 888 F.3d 413, 417–18 (9th Cir. 2018)
 15 (holding that the amount in controversy for diversity actions is what is at stake in the litigation
 16 based on the claims in the complaint "at the time the case is removed by the defendant").

17 In its notice of removal, KOS alleges that the Court has diversity jurisdiction over the
 18 current matter because (1) Watts and KOS are citizens of different states, and (2) the amount in
 19 controversy exceeds \$75,000, exclusive of costs and interest. ECF No. 1 at 2. The Court's original
 20 jurisdiction over diversity cases is limited to when there is diversity of citizenship between the
 21 parties, no defendant is a citizen of the state where the action was filed, and the amount in
 22 controversy exceeds \$75,000 exclusive of interest and costs. 28 U.S.C. § 1441(b)(2); 28 U.S.C.
 23 § 1332(a). "The party seeking to invoke the court's jurisdiction bears the burden of establishing
 24 that jurisdiction exists." *Scott v. Breeland*, 792 F.2d 925, 927 (9th Cir. 1986).

25 Diversity of citizenship is determined, and must exist, at the time the complaint is filed.
 26 *Strotek Corp. v. Air Transp. Ass'n. of Am.*, 300 F.3d 1129, 1131 (9th Cir. 2002). Here, the Court
 27 finds that KOS has failed to meet its burden of establishing that complete diversity exists. KOS
 28 claims that Watts is a citizen of Nevada and KOS is a citizen of Delaware. ECF No. 1 at 2. KOS

1 states that it “is a Delaware limited liability company, organized under the laws of the State of
 2 Delaware.” *Id.* A limited liability company is a citizen of all states where its members are citizens.
 3 *Johnson v. Columbia Propes. Anchorage, LP*, 437 F.3d 894, 899 (9th Cir. 2006) (“an LLC is a
 4 citizen of every state of which its owners/members are citizens”). KOS, a limited liability
 5 company, has failed to adequately allege its citizenship because it has not identified its members
 6 and the citizenship of its members. Without the adequate identification of member citizenship, a
 7 limited liability company fails to sufficiently establish complete diversity. *See Segundo Suenos,*
 8 *LLC v. Jones*, 494 F. App’x 732, 735 (9th Cir. 2012) (holding that alleged diversity jurisdiction
 9 was “legally deficient” because the complaint contained “no allegations setting forth the
 10 citizenships of the constituent members of the limited liability company”).

11 Moreover, the Court finds that KOS has failed to adequately allege that the amount in
 12 controversy exceeds \$75,000. KOS argues that the jurisdictional threshold of \$75,000 is met even
 13 though Watts does not specifically plead an amount of damages in his original Complaint. ECF
 14 No. 1 at 2. KOS reasons that liability under Nev. Rev. Stat. § 41.1347, permits recovery of
 15 attorneys’ fees and costs and that, should this matter proceed through trial, Watts will have incurred
 16 attorneys’ fees in excess of \$75,000.¹ *Id.* In its motion to remand, Watts argues that the amount in
 17 controversy does not exceed \$75,000. ECF No. 9 at 2. Watts claims that his original Complaint
 18 does not plead for attorneys’ fees and, even if it did, KOS only speculates about hourly rates and
 19 the duration of this litigation to conclude the amount in controversy requirement is satisfied. *Id.* In
 20 response, KOS argues that it is irrelevant whether Watts expressly seeks attorneys’ fees. ECF No.
 21 18 at 4. KOS also alleges that future attorneys’ fees may be included in an amount in controversy
 22 determination because they are at stake in the underlying litigation. *Id.* at 4, 5.

23 The Court finds that the amount in controversy is not facially apparent from Watts’ original
 24 Complaint. When the amount of damages is unclear from a plaintiff’s state court complaint, the
 25 defendant has the burden of establishing by a preponderance of the evidence that the required

27 ¹ KOS admits that it does not know Watts’ counsel’s hourly billing rate. ECF No. 1 at 3. Instead,
 28 KOS uses the average hourly billing rates for attorneys in Nevada (including \$450 per hour for
 partners and \$250 per hour for experienced associates), for its estimation that Watts will incur more
 than \$75,000 in attorneys’ fees here. *Id.*

1 amount in controversy is met. *See Urbino v. Orkin Servs. of Cal., Inc.*, 726 F.3d 1118, 1121–22
 2 (9th Cir. 2013) (quotation omitted); *see also Sanchez*, 102 F.3d at 404.

3 Here, KOS fails to meet its burden of establishing by a preponderance of the evidence that
 4 the amount in controversy exceeds \$75,000. KOS offers an attenuated theory of amount in
 5 controversy that is based on conjecture. First, there is no outright claim for attorneys' fees in Watts
 6 original Complaint. Accordingly, KOS asks the Court to consider them because they are
 7 recoverable under Nev. Rev. Stat. § 41.1347. Next, KOS asks the Court to assume Watts' counsel's
 8 hourly billing rate based upon the average partner or experienced attorney billing rate in Nevada.
 9 KOS then asks the Court to suppose that this matter will continue past trial to estimate that Watts'
 10 attorneys' fees might exceed \$75,000. Simply, KOS asks that the Court engage in too much
 11 guesswork to determine that the amount in controversy exceeds \$75,000 here. "Where doubt
 12 regarding the right to removal exists, a case should be remanded to state court." *Matheson v.*
 13 *Progressive Specialty Ins. Co.*, 319 F.3d 1089, 1090 (9th Cir. 2003). Moreover, if "it appears that
 14 the district court lacks subject matter jurisdiction, the case shall be remanded." 28 U.S.C. §
 15 1447(c). The Court finds that KOS fails to meet its burden of establishing that the amount in
 16 controversy exceeds \$75,000. Accordingly, it appears the Court lacks subject matter jurisdiction
 17 over the present matter. As such, the Court grants Watts' motion to remand.

18 **IV. CONCLUSION**

19 IT IS THEREFORE ORDERED that Watts' Motion to Remand (ECF No. 9) is
 20 **GRANTED**.

21 IT IS FURTHER ORDERED that KOS' Motions to Dismiss (ECF Nos. 6, 19) are
 22 **DENIED as moot**.

23 The Clerk of the Court shall REMAND this action, 3:23-cv-00328-LRH-CSD, to the
 24 Second Judicial District for the State of Nevada.

25 IT IS SO ORDERED.

26 DATED this 25th day of August, 2023.



27

 LARRY R. HICKS
 28 UNITED STATES DISTRICT JUDGE